

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE MARY GSCHWEND,

Debtor/Appellant.

No. C 12-2057 PJH
Bankr. Case No. 06-41635 MEH
BAP NO. NC 12-1165

**ORDER TO SHOW CAUSE
RE STATUS OF RECORD ON
APPEAL**

Debtor/appellant Mary Gschwend ("Gschwend") appeals the bankruptcy court's March 6, 2012 order denying her motion to reopen her chapter 13 bankruptcy case and to allow prosecution of a contempt action against creditor Barbara G. Markus and Markus' attorney for violation of the automatic stay. The appeal was originally assigned to the Ninth Circuit Bankruptcy Appellate Panel ("BAP"), but on April 18, 2012, appellee Markus elected to have the appeal transferred to this court.

The BAP sent a number of documents to this court with the statement of election on April 25, 2012, but the status of the record on appeal remains unclear to the court or to this court's clerk's office. This court's clerk's office has not yet received the record from either the bankruptcy court or the BAP.

Based on the court's review of the bankruptcy court's docket in Bankr. Case No. 06-41635 MEH, it appears that the parties may have failed to perfect the record in accordance with Federal Rule of Bankruptcy Procedure 8006. Although the BAP sent this court what appears to be Gschwend's "designation of record," it does not appear that Gschwend filed

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For the Northern District of California

1 a designation of the record with the bankruptcy court as required by Federal Rule of
 2 Bankruptcy Procedure ("FRBP") 8006; nor does it appear that Markus filed any designation
 3 of the record with the bankruptcy court; or that the bankruptcy court ever transmitted the
 4 record on appeal to the BAP.¹ Pursuant to FRBP 8006, the parties were required to file
 5 their designations of the record *with the bankruptcy court* months ago.

6 This court's briefing schedule on appeal depends on the parties' perfection of the
 7 record with the bankruptcy court and on the bankruptcy court's transmission of the record
 8 to this court.

9 Accordingly, both parties are ORDERED to file with this court **no later than**
 10 **Wednesday, July 11, 2012**, statements advising the court regarding the status of the
 11 perfection of the record on appeal. If the parties have not yet filed their designations of the
 12 record with the bankruptcy court, they should explain their failure to do so, and are
 13 ORDERED to file the designations ***with the bankruptcy court no later than Wednesday,***
 14 **July 11, 2012.** If the parties fail to respond to this order and to perfect the record in
 15 accordance with this order, the appeal will be dismissed for a failure to prosecute pursuant
 16 to FRBP 8001.

17 To the extent this court is mistaken and the record has been perfected and is in the
 18 possession of the bankruptcy court or the BAP, the clerk's office(s) of the bankruptcy court
 19 and/or the BAP should transmit the record to this court's clerk's office as soon as possible
 20 but **no later than Friday, July 13, 2012.**

21 **IT IS SO ORDERED.**

22 Dated: July 2, 2012



23 _____
 24 PHYLLIS J. HAMILTON
 25 United States District Judge

26 cc: Ninth Circuit BAP; Honorable M. Elaine Hammond, United State Bankruptcy Court

27 _____
 28 ¹ The court has attached that designation of record to the instant order.

MARY-ANN GSCHWEND
4402 MARSH ELDER COURT
CONCORD CA 94521

925 305 0630

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

MARY-ANN GSCHWEND
APPELLANT

V.

BARBARA GAIL MARKUS
APPELLEE

REAL PARTY OF INTEREST
ATTORNEY ELLIOTT ABRAMS +
WIFE M. RUBY SMITH ABRAMS

BK CASE #06-41635

CHAPTER 13

BAP CASE #NC-12-1165

**DESIGNATION OF
RECORD ON APPEAL**

DESIGNATION OF RECORD ON APPEAL

THE APPELLANT HEREBY DESIGNATES THE PLEADINGS, TRANSCRIPTS
AND THE RECORD ON APPEAL, AS FOLLOWS:

- 1) CERTIFIED TRIAL TRANSCRIPT FROM THE CONTRA COSTA COUNTY
SUPERIOR COURT
- 2) CERTIFIED SHERIFFS SALE FOLDER FROM THE SOLANO COUNTY
SHERIFFS DEPARTMENT
- 3) OTHER PLEADINGS, RECORDS AND EXCERPTS, WHICH INCLUDE:
 - RECORDERS AND TITLE RECORDS
 - REGISTER OF ACTIONS
 - REAL ESTATE MARKET ANALYSIS/ PRE- SALE APPRAISAL,
INCLUDING PHOTOS

THE APPELLANT ASSUMES THAT THE BANKRUPTCY FOLDER FROM THE
OAKLAND BK OFFICE HAS BEEN FORWARDED TO THE BAP.

DATE 4/19/12


M. GSCHWEND, APPELLANT

Mary Ann Gschwend
4402 Marsh Elder Court
Concord, CA 94521

925-798-3282

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

MARY-ANN GSCHWEND)	BK CASE #06-41635
APPELLANT)	CH APTER 13
V.)	
BARBARA GAIL MARKUS)	PROOF
APPELLEE)	OF
)	SERVICE
REAL PARTY OF INTEREST)	
ATTORNEY ELLIOTT ABRAMS +)	
WIFE M. RUBY SMITH ABRAMS)	
)	

I, M. GSCHWEND, declares as follows: I am over the
age of 18 years.

On 4/21/12, I served the following documents:

DESIGNATION OF RECORD ON APPEAL

by enclosing a true copy thereof in a prepaid postage sealed envelope and placing it for
collection and mailing in Concord, California on the above date, addressed as follows:

Elliott Abrams
Law Offices of Elliott Abrams
2033 North Main Street, Suite 750
Walnut Creek, CA 94596

I declare under penalty of perjury that the foregoing is true and correct, and that this
declaration was at Concord, California.

Date: 4/21/12

M. GSCHWEND
M. GSCHWEND - APPELLANT